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14
15 IN THE UNITED STATES DISTRICT COURT
16
17 DISTRICT OF ARIZONA

18 United States of America,

19 No. CR-23-08132-PCT-JJT

20 Plaintiff,

21 vs.
22
23 DEFENDANT'S OPPOSITION TO
24 GOVERNMENT'S MOTION IN
25 LIMINE RE: DNA TESTIMONY AND
26 NOTICE OF INTENT TO RELY ON
FED. R. EVID. 703

27 Donald Day, Jr.,

28 Defendant.

18 Mr. Day respectfully urges the Court to deny the Government's motion in limine
19 concerning DNA testimony (Dkt 141).

20 The government seeks a pretrial ruling that "the government does not need to call
21 the FBI DCU biologists at trial to satisfy the defendant's general Sixth Amendment
22 rights." Mot. at 8.

23 Such a ruling would be premature and, at this point, advisory. Whether the
24 testimony of FBI DCU biologists is necessary to comply with the Sixth Amendment
25 depends, in large part, on the evidence the government intends to admit and the testimony
26 provided by Ms. Plaza at trial.

1 For example, if Ms. Plaza testifies that she did not supervise the FBI DCU
2 biologists; that she did not review every test the biologists performed; and had no
3 knowledge or control over the procedures that were used to conduct the tests—then, under
4 those circumstances, the testimony of the FBI DCU biologists would likely be necessary
5 to comply with the Sixth Amendment. *See Bullcoming v. New Mexico*, 564 U.S. 647, 661
6 (2011).

7 Although Mr. Day does not now anticipate objecting to the admission of DNA
8 evidence on Sixth Amendment grounds, that could change, depending on Ms. Plaza's
9 testimony at trial. And, because Mr. Day cannot say with certainty what that testimony
10 will be, he cannot judge whether admission of DNA analysis based on Ms. Plaza's
11 testimony alone would violate the Sixth Amendment.

12 Accordingly, the government's request is premature. The Court should deny the
13 motion.

15 || Respectfully submitted: May 9, 2025.

JON M. SANDS
Federal Public Defender

s/Mark Rumold
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Asst. Federal Public Defender